SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968.

No. 1174

UNITED STEELWORKERS OF AMERICA, AFL-CIO,
Petitioner,

vs.

HAMILTON STEEL PRODUCTS, INC., NATHAN YORKE, AND THE UNION CENTRAL LIFE INSURANCE COMPANY,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR THE UNION CENTRAL LIFE INSURANCE COMPANY IN OPPOSITION.

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OPINIONS BELOW.

The opinion of the Court of Appeals affirming the dismissal of the Complaint is reported at 404 F. 2d 878 (Appendix 2 to Petition, p. 24).

The opinion of the Court of Appeals in the related case is reported at 374 F. 2d 820. This latter case is still pending and undecided in the District Court.

STATEMENT.

Shortly after Hamilton Steel Products, Inc. was declared a bankrupt, The Union Central Life Insurance Company ("Union Central") filed its Complaint for Declaratory Judgment and Interpleader under the provisions of the Declaratory Judgment Act, U. S. C. A. Title 28, § 2201 and Interpleader Act, U. S. C. A. Title 28, § 1335, to construe the terms of a Group Annuity Policy it had issued to Hamilton Steel Products, Inc., and otherwise to discharge its obligations with respect to same. It joined as defendants all interested parties, including Tom Webb, Mary Breach and Arthur Mayberry, as officers and agents of United Steelworkers of America, AFL-CIO Local Union 1092; Samuel E. Perish, as duly authorized representative and agent of United Steelworkers of America, AFL-CIO (the "Union"), and United Steelworkers of America, District 31, Subdistrict 5 (Vol. I, pp. 13-24). In answer to the Complaint, those defendants stated as follows (Vol. I, p. 31):

> "26. Defendants affirmatively allege that all of the funds on deposit with the plaintiff in connection with Policy No. GA-1061 are held for the sole and exclusive benefit of the employees of Hamilton Steel Products, Inc. (who are members of the Local 1092, United Steelworkers of America, AFL-CIO), and that they are the sole persons entitled to participate in any distribution of proceeds of such policy, *and that the only issue before the Court is the determination of relative and respective rights of such employees to such funds.*
>
> "WHEREFORE, such defendants as aforesaid, pray for the entry of an Order by the Court providing for:
>
> "(a) Payment of 'prior benefits' to the employees entitled thereto;
>
> "(b) Payment to the employees of the balance of the funds on deposit with the plaintiff in accordance

with their respective interests thereto; * * *" (Emphasis added.)

Thereafter, those representatives of the Union changed their position and through their attorneys filed a Motion to substitute the Union as a party defendant, in lieu of themselves (Vol. I, pp. 106, 107). That motion was denied (Vol. I, p. 110). Thereafter, the same attorneys filed a motion on behalf of the Union for leave to intervene as a party defendant (Vol. I, pp. 111-112). Intervention was denied, and the Union prosecuted its first appeal. The order of the District Court was affirmed in *Union Central Life Insurance Company* v. *Hamilton Steel Products, Inc.*, 374 F. 2d 820 (7th Cir., 1967). The Union did not petition this Court for a writ of certiorari following that judgment.

Subsequently, the Union filed a new Complaint (Vol. III, Appendix pp. 5-11) seeking, through compulsory arbitration under the grievance procedures of the Collective Bargaining Agreement (to which Union Central was not a party), the same relief sought in the District Court by the declaratory judgment and interpleader action brought by Union Central. The Union's Complaint was dismissed by the District Court, and the dismissal order was affirmed by the Court of Appeals for the 7th Circuit in the proceedings below.

The "Statement of the Case" contained in the Petition is incorrect in making the statement (at p. 7 of the Petition): "* * * having been told by the Court of Appeals that a suit initiated by the Union to enforce the pension agreement would be entertained, the Union instituted the present action * * *". No invitation to file the present action was extended by the Court of Appeals, the opinion of which had merely contrasted the circumstances of the pending case with a suit to enforce group rights under a collective bargaining agreement—the latter not being before the Court (374 F. 2d 820, 823).

ARGUMENT.

The Union does not belong in this Court. It failed to seek review by this Court after the Court of Appeals had entered a final judgment on the denial of the Union's petition to intervene in the declaratory judgment and interpleader action brought by Union Central. Instead of filing a petition for writ of certiorari in this Court, the Union sought a redetermination of the same matters decided in the first action, through the device of a new suit brought in its own name. The judgments of the District Court and the Court of Appeals respecting the second action understandably were the same as their judgments in the earlier determination, but the proper time (if any) for the Union to seek review of those judgments was after the determination made by the Court of Appeals upon the Union's first appeal (which was determinative of the Union's second appeal).

Furthermore, the Union waived any right to maintain its Section 301 suit when its representatives on January 4, 1966 filed an answer to the Complaint in the declaratory judgment and interpleader action, submitting to the jurisdiction of the Court in that action and asking the Court to distribute the funds on deposit with Union Central to the "employees * * * in accordance with their interests" (Vol. I, pp. 2, 30-31). As the Court of Appeals properly held on the Union's first appeal, the Union, by its participation in the trial court proceedings, waived any right to arbitration which it may have had (374 F. 2d 820, 824).

Even if the Union were not estopped, at this late date, to seek this Court's review of the judgments below, this Court should deny the petition for writ of certiorari for the reason that there are no "special and important reasons" for review of the judgment below (Rule 19(1) of

this Court). The judgment below does not bar the Union from asserting any argument on the merits it wants to assert in the District Court, through its representatives who are defendants in the pending declaratory judgment and interpleader suit (and who are represented by the Union's same attorneys). The judgment below merely held that the trial court did not abuse its discretion in refusing to entertain the Union's Section 301 suit, because the issues can be disposed of in the prior action pending in the same District Court. No one's substantive rights have been affected, because the issues have not yet been determined in the former action (the Union's two appeals having delayed the resolution of such issues).

There is no conflict between the judgment of the Court of Appeals in the case at bar and the judgment of the Court of Appeals of any other Circuit. The Union here attempts to create such a conflict (Petition, pp. 11, 16-18) between the judgment below and the judgment of the Court of Appeals for the Fifth Circuit in *Connecticut General Life Ins. Co.* v. *Craton,* 405 F. 2d 41 (1968), but the cases are completely consistent. In the *Craton* case there was no prior action pending when the local union and 214 of its members brought a declaratory judgment action against the employer and the group disability insurer for the interpretation of the collective bargaining agreement and the group policy. Unlike the case at bar, the plaintiffs in that case were not seeking arbitration of the meaning of the insurance contract. The Court in that case did not hold that the insurance company was subject to the Court's jurisdiction because of Section 301; rather, the Court expressly disclaimed any such holding, stating that the district court had jurisdiction over the insurance company under the doctrine of pendent jurisdiction (405 F. 2d 41, 48).

The Union also erroneously suggests (Petition, pp. 11,

16-18) a conflict between the decision below and those in *International Union* v. *Textron, Inc.*, 312 F. 2d 688 (6th Cir. 1963) and 359 F. 2d 966 (6th Cir. 1966). Those cases have no relevancy whatsoever and are apparently cited by Petitioner solely because one of the defendants was the group insurer under the pension plan in that case. No arbitration of the insurance policy was sought in those cases; no interpretation of the policy was even sought in court, and it does not appear that the insurance company had any objection to being named in the suits. The first suit was dismissed on the employer's motion, and there was no issue on the appeal as to the applicability of Section 301 to the defendant insurer. The second case involved only an interpretation of the collective bargaining agreement (on the question of whether the pension plan was terminated by the employer's notice to the Union that the collective bargaining agreement had been terminated). There was no issue as to the meaning of the insurance contract and no suggestion that the insurance contract could be subjected to arbitration.

All other cases cited by the Union are similarly distinguishable, failing to support the arguments for which the Union cites them. There is thus no sound reason under the Rules of this Court why this Court should grant the Petition.

Furthermore, the Court of Appeals was clearly correct in its opinions in the Union's two successive appeals, when it held that this matter does not involve a "violation of contract between an employer and a labor organization representing employees". Union Central was not a party to the collective bargaining agreement between the employer and the Union, nor was it a party to the pension plan adopted pursuant to the collective bargaining agreement. It may not be forced to abide by the decision of arbitrators, in the selection of which it would have no part, under an arbitration procedure to which it never agreed. Union

Central is a party to an insurance contract, for the interpretation of which it has asked the District Court's assistance. The Union, through agents who are parties to that proceeding, will have every protection to which it is entitled, in the action brought by Union Central. Instead, it has sought to oust the District Court of its prior jurisdiction to declare the rights of the parties in that action, by throwing the insurance policy into the hands of labor arbitrators. Such was never the intent of Section 301 which provides that "suits for violation of contracts between an employer and a labor organization * * * may be brought in any district court".

CONCLUSION.

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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